

² The Board notes that, following the March 26, 2020 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

In an October 25, 2018 development letter, OWCP informed appellant that, when her claim was first received, it appeared to be a minor injury that resulted in minimal or no lost time for work and it had now reopened her claim for consideration of the merits. It advised her of the deficiencies of her claim and requested additional medical evidence. OWCP afforded appellant 30 days to respond.

Appellant submitted medical evidence in support of her claim.

By decision dated November 30, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish a valid medical diagnosis from a qualified physician in connection with the accepted September 25, 2018 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant subsequently submitted additional evidence, including October 25 and December 3, 2018 status reports from Dr. Ronald T. Whitmore, a family medicine specialist, placing appellant on modified duty from October 25 to November 9, 2018 and releasing her to full-duty work beginning December 3, 2018. OWCP also received a September 25, 2019 left foot x-ray.

On November 12, 2019 appellant requested reconsideration *via* an appeal request form.

By letter dated December 12, 2019 OWCP confirmed that it had received appellant's request for reconsideration on November 12, 2019, but noted that the form was unsigned. OWCP requested that appellant sign and return to the form. On December 31, 2019 OWCP received appellant's signed appeal request form.

By decision dated March 26, 2020, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board has duly considered the matter and finds that appellant's request for reconsideration was timely filed. Section 10.607(a) of OWCP's implementing regulations provides that a request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.³ One year following OWCP's November 30, 2018 merit decision was November 30, 2019. As that fell on a Saturday, appellant had until Monday, December 2, 2019 to request reconsideration.⁴ Because OWCP initially received appellant's reconsideration request on November 12, 2019, the Board finds that it was timely filed.⁵ The clear

³ 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(a) (February 2016).

⁴ When determining the one-year period for requesting reconsideration, the last day of the period should be included unless it is a Saturday, Sunday, or a legal holiday. Federal (FECA) Procedure Manual, *id.*

⁵ See *L.T.*, Docket No. 21-0322 (issued June 28, 2021); *J.H.*, Docket No. 18-1367 (issued July 17, 2019); *R.M.*, Docket No. 17-0473 (issued June 6, 2017); *C.B.*, Docket No. 13-1732 (issued January 28, 2014). See also *Steven E. Pratt* Docket No. 93-443 (issued February 2, 1994) (the Board found that appellant's reconsideration request was later perfected and therefore timely).

evidence of error standard utilized by OWCP in its March 26, 2020 decision is appropriate only for untimely reconsideration requests.⁶ Therefore, the Board will set aside OWCP's March 26, 2020 decision and remand the case for an appropriate decision applying the correct standard for timely requests for reconsideration.

IT IS HEREBY ORDERED THAT the March 26, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: August 24, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁶ See 20 C.F.R. § 10.607(b).